

THE TRIAL OF ANIMALS AND INSECTS.

A LITTLE KNOWN CHAPTER OF MEDIÆVAL JURISPRUDENCE.

By HAMPTON L. CARSON.

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In the open square of the old Norman city of Falaise, in the year 1386, a vast and motley crowd had gathered to witness the execution of a criminal convicted of the crime of murder. Noblemen in armour, proud dames in velvet and feathers, priests in cassock and cowl, falconers with hawks upon their wrists, huntsmen with hounds in leash, aged men with their staves, withered hags with their baskets or reticules, children of all ages and even babes in arms were among the spectators. The prisoner was dressed in a new suit of man's clothes, and was attended by armed men on horseback, while the hangman before mounting the scaffold had provided himself with new gloves and a new rope. As the prisoner had caused the death of a child by mutilating the face and arms to such an extent as to cause a fatal hemorrhage, the town tribunal, or local court, had decreed that the head and legs of the prisoner should be mangled with a knife before the hanging. This was a mediæval application of the *lex talionis*, or "an eye for an eye and a tooth for a tooth." To impress a recollection of the scene upon the memories of the bystanders an artist was employed to paint a frescoe on the west wall of the transept of the Church of the Holy Trinity in Falaise, and for more than four hundred years that picture could be seen and studied until destroyed in 1820 by the carelessness of a white washer. The criminal was not a human being, but a sow, which had indulged in the evil propensity of eating infants on the street.

Within the first ten years of the sixteenth century, Bartholomew

Chassenée, then a young French *avocat*, who became a distinguished jurist, and president of the Parlement de Provence, a position corresponding to chief justice, won his spurs at the bar by his ingenuity in defending the Rats of the province of Autun, who were charged with the crime of having eaten the barley crop. He urged that his clients, like other defendants, were entitled to notice before condemnation. When they failed to appear in court in obedience to the proclamation published from the pulpits of all the parishes, he argued that their non appearance was due to the vigilance of their mortal enemies, the cats, and that if a person be cited to appear at a place to which he could not come in safety the law would excuse his apparent contumacy. Years later, at the height of his fame, in 1540, he insisted upon the same principle, in defending the persecuted Waldenses who were prosecuted for heresy, contending that as it had been established in the Rat case that even animals should not be adjudged and sentenced without a hearing, all of the safeguards of justice should be thrown around the accused.

I have cited these cases of the Sow and the Rats, not as isolated and extraordinary instances of mediæval trials, such as the celebrated Cock at Basel in 1474, but as fair examples of what was common to Continental jurisprudence from the ninth to the eighteenth century. Indeed as late as 1864 in Pleternica in Slavonia, a pig was tried and executed for having maliciously bitten off the ears of an infant one year old, and we are told by Professor Karl von Amira, who reports the case, that while the flesh of the animal was thrown to the dogs, the owner of the pig was put under a bond to provide a dowry for the mutilated girl, so that the loss of her ears might not prove an obstacle to her marriage.¹ Of the extent to which the Trial of Animals formed a substantial part of Mediæval Jurisprudence, the most convincing proof is found in the Report and Researches of Barriat-Saint-Prix,² who gives numerous extracts from the original records of such proceedings, and also a list of the kinds of animals tried and condemned. He gives ninety-three cases from the beginning of the twelfth to the middle of the eigh-

¹ "Thierstrafen and Thierprocesse," p. 578, Innsbruck, 1891.

² *Memoires of the Royal Society of Antiquaries of France* (Paris, 1829, Tome VIII., pp. 403-50).

teenth century. Carlo D'Addosio,³ a Neapolitan writer of recent times, enlarges the list to one hundred and forty-four prosecutions, resulting in the execution or excommunication of the accused, and extends the time from the year 824 to 1845; while our fellow countryman, Mr. E. P. Evans, in an exhaustive "Chronological List of the Prosecution of Animals from the Ninth to the Twentieth Century," begins with the case of moles in the valley of Aosta in 824, and closes with that of a fierce dog who aided murderers in their crime in Switzerland and was tried as an accomplice as late as 1906.⁴

An analysis of Mr. Evans' list gives these results. Out of one hundred and ninety-six cases he assigns, 3 to the ninth, 3 to the twelfth, 2 to the thirteenth, 12 to the fourteenth, 36 to the fifteenth, 57 to the sixteenth, 56 to the seventeenth, 12 to the eighteenth, 9 to the nineteenth and 1 to the twentieth centuries. The scenes were laid in Belgium, Denmark, France, Germany, Italy, Portugal, Russia, Spain, Switzerland, Turkey, England, Scotland, Canada and Connecticut, the last named being in the days of Cotton Mather. This wide distribution of time and territory shows how persistent and prevalent the practice was, and corrects any notion of its being due to local passion or territorial superstition. The most numerous cases were in France, but this is due to a more careful study of ancient records by French antiquarians than by those of other nations. The two English cases were those of a dog and a cock, the Scotch case, that of a dog, the Canadian case, that of turtle-doves, and the Connecticut cases those of a cow, two heifers, three sheep and two sows.

As early as 1486, in a curious book, printed by Anthony Neyret, there is a classification of beasts or animals into those which are sweet beasts (*bestes douces*) such as the hart and hind, and stenchy beasts (*bestes puantes*) such as pigs, foxes, wolves and goats, to which in time were added of domestic animals, such as asses, bulls, cows, dogs, horses and sheep, those of a ferocious and vicious disposition. These all fell under the jurisdiction of the civil and crim-

³ "Bestie Delinquenti," Napoli, 1892.

⁴ "The Criminal Prosecution and Capital Punishment of Animals," N. Y., 1906.

inal courts, and after trial and condemnation were executed either by hanging, or burning at the stake. Vermin such as field mice, rats, moles and weasels and pestiferous creatures, such as bugs, beetles, bloodsuckers, caterpillars, cockchafers, eels, leeches, flies, grasshoppers, frogs, locusts, serpents, slugs, snails, termites, weevils and worms were disciplined by the ecclesiastical tribunals and in due time excommunicated.

This sharp distinction between the jurisdiction of the secular and ecclesiastical tribunals is explained by Professor von Amira, who says that animals, such as pigs, cows, horses and dogs, which were in the service of man and who committed crimes against mankind, could be arrested, tried, convicted and executed like any other members of his household, but rodents and insects were not the subject of human control, and could not be seized and imprisoned by the civil authorities. Hence, it was necessary to appeal to the intervention of the Church, and implore her to exercise her supernatural functions for the purpose of compelling them to desist from devastation of those fields and places devoted to the production of human food.

The explanation of the mental and moral attitude of the tribunals in those days in relation to the subject is to be traced to the belief of the ancient Greeks, who held that a murder, whether committed by a man, a beast, or an inanimate object, such as a deadly weapon, a spear, a knife, or a hammer, unless properly expiated, would arouse the furies and bring pestilence upon the land. The mediæval Church taught the same doctrine, but substituted the demons of Christian theology for the furies of classical mythology. Eminent authorities, as Mr. Evans has shown, maintained that all beasts and birds, as well as creeping things were devils in disguise, and that homicide committed by them, if it were permitted to go unpunished, would furnish an opportunity for the intervention of devils to take possession of persons and places. The cock at Basel, suspected of laying an egg in violation of his sex, was feared as an abnormal, inauspicious and therefore diabolic creature: the fatal cockatrice might thus be hatched. While as to swine, they were peculiarly attractive to devils, and hence peculiarly liable to diabolical posses-

sion as proved by the legend by which devils left the lunatic and entered the herd of swine which pitched itself into the sea. Beelzebub was incarnate in all night beasts, especially if they happened to be black. If Pythagoras was right in teaching, "that souls of animals infuse themselves into the trunks of men," what wonder was it that Gratiano exclaimed to Shylock :

"Thy currish spirit
Govern'd a wolf, who, hanged for human slaughter,
Even from the gallows did his fell soul fleet,
And, whilst thou lay'st in thy unhallowed dam,
Infused itself in thee ; for thy desires
Are wolfish, bloody, sterved and ravenous."

In explanation of the judicial proceedings so solemnly resorted to in the trial, conviction and punishment of animals, a Swiss jurist, Edward Osenbrüggen, in 1868, advanced and maintained the thesis, that they can only be understood on the theory of the personification of animals : that as only a human being can commit crime and thus render himself liable to punishment, it is only by an act of personification that the brute can be placed in the same category as man and become subject to the same penalties ; and he regarded the Basel cock as a personified heretic, and therefore properly burned at the stake.

Mr. Evans regards this as purely fanciful, and concludes that "the judicial prosecution of animals, resulting in their excommunication by the Church or their execution by the hangman, had its origin in the common superstition of the age, which has left such a tragical record of itself in the incredibly absurd and atrocious annals of witchcraft. The same ancient code that condemned a homicidal ox to be stoned, declared that a witch should not be suffered to live, and although the Jewish law giver may have regarded the former enactment chiefly as a police regulation designed to protect persons against unruly cattle, it was, like the decree of death against witches, genetically connected with the Hebrew cult and had therefore an essentially religious character. It was these two paragraphs of the Mosaic law that Christian tribunals in the Middle Ages were

wont to advance as their authority for prosecuting and punishing both classes of delinquents.”

In conclusion, may we not exclaim, in the words of the poet Rogers in his Ode to Superstition,

“Hence to the realms of Night
Dire Demon hence!
Thy chain of adamant can bind
That little world, the human mind,
And sink its noblest powers
To impotence.”